



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1994

Mr. Robert E. Diaz  
Assistant City Attorney/Police Legal Advisor  
City of Arlington  
Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR94-803

Dear Mr. Diaz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29803.

The City of Arlington Police Department (the "department") has received two open records requests for the arrest warrant affidavits for three individuals accused in the aggravated kidnapping of a 16 year old girl. You contend that portions of the requested affidavits may be withheld from required public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .  
[and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement . . . .

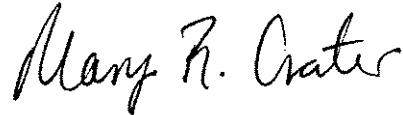
When a governmental body raises section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate law enforcement or prosecution interest. Open Records Decision No. 434 (1986). In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established the guidelines on the types of information contained in pending police investigation files that are public and those that may be withheld in order to protect law enforcement interests. The court's holding was summarized in Open Records Decision No. 127 (1976), which held that the types of information typically found on the front page of offense reports are public information, but all remaining information in the police file may be withheld from the public during the pendency of the criminal investigation because the release of that information presumptively would interfere with the investigation.

Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You inform us that a federal magistrate has released to the public a federal arrest warrant affidavit for a fourth individual who allegedly abetted the kidnapping. In addition, it is apparent from the news clippings submitted with your request that the department has already provided the media detailed information about this case. The applicability of section 552.108 to the records at issue has been compromised to the extent that information contained in the state affidavits has already been made public as a consequence of these releases. The department has not established that the subsequent release of similar information contained in the state affidavits can cause additional harm to the state's prosecution. Accordingly, we conclude that to the extent that information contained in the state affidavits is also contained in the federal affidavits or has otherwise been released to the public, section 552.108 is inapplicable and the information must be released.

After reviewing the state affidavits, the federal affidavit, and the news clippings you submitted to this office, we generally agree that most of the information you have marked in the state affidavits may be withheld under section 552.108. Some of the information you have marked, however, has already been released, and may not be withheld under section 552.108 for the reasons explained above. For similar reasons, the department may not withhold any of the previously released information pursuant to either the informer's privilege, as incorporated into the Open Records Act by section 552.101, or the "litigation" exception, section 552.103. See Open Records Decision Nos. 208 (1978) (informer's privilege does not apply when the informant's identity is known to the party complained of); 349 (1982) (applicability of section 552.103 ends once information has been obtained by all parties to the litigation). We have highlighted in yellow portions of the information you have marked that we conclude the department must release.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/RWP/rho

Ref.: ID# 29803

Enclosures: Marked documents

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